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PSI Corporation

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND BRANCH**

PSI CORPORATION (f/k/a/ FRIENDLYWAY
CORPORATION, f/k/a BIOFARM, INC.),

Plaintiff,

vs.

ALEXANDER VON WELCZEK, HENRY
LO, MICHAEL DRAPER, and
FRIENDLYWAY AG,

Defendants.

FRIENDLYWAY, INC., KARL
JOHANNSMIEIER, PACIFIC CAPSOURCE,
INC., and DERMA PLUS, INC.,

Nominal Defendants.

Case No. C 07-02869 SBA

**PSI CORPORATION'S NOTICE OF
MOTION AND MOTION TO DISMISS
DEFENDANTS VON WELCZEK'S
AND LO'S CROSS-COMPLAINT**

JURY TRIAL DEMANDED

Date : September 11, 2007

Time : 1:00 p.m.

Dept. : Courtroom 3, Third Floor

PLEASE TAKE NOTICE that on September 11, 2007, at 1:00 p.m. in Courtroom 3,
Third Floor, United States District Courthouse, Oakland Division, 1301 Clay Street, Suite

1 400 South, Oakland, California 94612-5212, Plaintiff PSI Corporation (f/k/a Friendlyway
2 Corporation, f/k/a Biofarm, Inc.) will move this Court for an Order pursuant to Federal
3 Rule of Civil Procedure 12(b)(6) dismissing Counts Two, Three and Four of Defendants
4 Alexander von Welczeck's and Henry Lo's Cross-Complaint [Docket No. 28]. The grounds
5 for the Motion to Dismiss¹ are:
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8 1. Count Two of the Cross-Complaint fails to state a claim on which relief can be
9 granted because the pleadings and the written contracts upon which Count Two is
10 expressly based demonstrate that Count Two is time-barred by the 2 year contractual
11 limitations period appearing on the Share Exchange Agreement;
12

13 2. Count Three of the Cross-Complaint fails to state a claim on which relief can
14 be granted for four principal reasons. First, Count Three is a logical nullity, for it accuses
15 PSI of failing to assume a liability that was already PSI's. Second, Count Three asserts a
16 breach of the April 2006 merger agreement between PSI and a third-party, but that written,
17 integrated agreement does not express the agreement PSI allegedly breached, and
18 Defendants were not parties to that agreement. Third, Count Three asserts a breach of an
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22 ¹ PSI will answer the allegations in Count One after resolution of this Motion to Dismiss so
23 as to prevent "duplicative sets of pleadings" and to avoid "confusion over the proper scope
24 of discovery during the motion's pendency." 5B Wright & Miller, FEDERAL PRACTICE AND
25 PROCEDURE § 1346; *Godlewski v. Affiliated Computer Servs., Inc.*, 210 F.R.D. 571, 572 (E.D. Va.
26 2002) (majority rule holds "that the filing of a motion that only addresses part of a
27 complaint suspends the time to respond to the entire complaint, not just to the claims that
28 are the subject of the motion"); *Batdorf v. Trans Union*, 2000 WL 635455, at *5 (N.D. Cal. May
8, 2000) (same).

1 agreement to pay the debt of another, but Defendants' pleading fails to aver an enforceable
2 written agreement to satisfy the applicable Statute of Frauds. Finally, Count Three seeks to
3 redress a wrong alleged committed against Defendant Welczeck's parents, not Defendants.
4 Accordingly, Defendants lack standing to assert Count Three.
5

6 3. Count Four of the Cross-Complaint fails to state a claim upon which relief can
7 be granted because where there is a written contract between the parties, California law
8 does not recognize a separate or additional cause of action for unjust enrichment.
9 Equitable, implied or quasi-contract claims are not recognized in California law where
10 there exists a written contract between the parties covering the same subject matter.
11

12 The Motion to Dismiss will be based upon this Notice of Motion and Motion to
13 Dismiss, the Request for Judicial Notice, the Memorandum of Points and Authorities, the
14 Proposed Order of Court and upon such other additional arguments and evidence as may
15 be presented at the time of hearing.
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19 COZEN O'CONNOR
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21 Dated: July 16, 2007

22 By: s/Daniel D. Harshman

23 Daniel D. Harshman
24 Attorneys for Plaintiff
25 PSI Corporation
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